HIGH COURT OF UTTARFANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. M/S No. 1496/01
Jeet Singh (deceased) & others
Vs
Stated of U.P. &others

Approved for reporting.

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~~Not approved for reporting~~

Dated of decision 26.4.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1496 (MS) OF 2001

(Old No. 10744/85)

1. Jeet Singh (deceased)
1/1. Inder Singh, S/o late Harnam Singh,
½. Balwant Singh, S/o late Preetam Singh.
1/3. Bhagwan Singh,
¼. Bhajan Singh,
1/5. Jinder Singh,
4. Jindra Singh (deceased)
4/1. Smt. Balvinder Kaur, W/o Jinder,
4/2. Mr. Parmin Dev Singh, S/o Jinder,
4/3. Mr. Lakvinder Singh, S/o Jinder,
5. Bhagwan Singh,
6. Balwant Singh,
7. Bakshi Singh,
Sri Nos. 4 to 7, sons of Preetam Singh,
All above residents of Village Bangawan,
Tehsil Khatima, District-Nainital.

.....Petitioners.

Versus

1. State of U.P.
2. 1st Additional District Judge, Nainital.
3. Prescribed Authority S.D.M. Khatima, District-Nainital,
Under U.P. Imposition of Ceiling on Land Holdings Act.
4. Ajeet Singh, S/o S.S. Churamani,
resident of Village Radhulia,
Tehsil Khatima, District-Nainital. .....Respondents.

Dated: 26.04.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Dharam Veer Singh, Sr. Advocate, appearing on behalf of the petitioner and learned Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondents no. 1 and 3 not to dispossess or evict the petitioners from the holdings i.e. Plot No. 50 area 301 Bigha 13 Biswa and 37 area 9 Bigha 16 Biswa in Village Bangawan Tehsil Khatima, District Nainital in

pursuance of the judgment in Ceiling Case No. 51/228 1975-76 : State Vs. Ajeet Singh dated 30.06.1976 (Annexure No. 2 to the writ petition). Further prayer has been made for a writ of certiorari quashing the orders dated 24.05.1983 and order dated 25.03.1985 passed by the respondents no. 3 and 2 respectively (Annexures No. 4 and 5 to the writ petition).

A perusal of the order dated 24th May, 1983 passed by the Prescribed Authority shows that the objection under section 111(2) of the U.P. Imposition of Ceiling of Holdings Act was rejected as being time barred.

Relying upon the judgment of ***Upper Ganges Sugar Mills Ltd. Vs. Civil Judge, Bijnor 1969 R.D. 202,*** it has been observed in ***Dilbag Singh Vs. State of U.P. and others (H.C.) 1978 RD Page 230*** as under:-

"In view of the rival submissions on the first question, the controversy gets considerably narrowed. In the Full Bench case of Upper Ganges Sugar Mills Ltd. (supra) in paragraph 20 the Full Bench held-

"The position, therefore, is that under the definition of the term 'tenure-holder' and the scheme of the Act the holder of a holding has to be considered to be a tenure-holder, whether or not he is recorded as such in the revenue records and there is nothing in the provisions of the Act that precludes his from the right of filing an objection to the statement issued by the Prescribed authority to another person."

Section 11 (2) and 11(3) of the Act provide-

"(2) The Prescribed Authority shall, on application made within thirty days from the date of the order under sub-section (1) by a tenure-holder aggrieved by such order passed in his absence and on sufficient cause being shown for his absence set aside the order and allow such tenure-holder to file objection against the statement prepared under Section 10

and proceed to decide the same in accordance with the provisions of Section 12.

(3) Subjection to the provisions of sub-section (2) and section 13, the order of the Prescribed Authority; shall be final and conclusive and be not questioned I any court of law".

Dealing with sub-section (2) the Full Bench in paragraph 27 held that there appears to be no valid reason why the benefit of Section 11 (2) may not be available to every tenure-holder and why Section 11(2) should be regarded as limited to those tenure-holders only who have been served with a notice under Section 10(2). It went on the hold-

"In my opinion, the words 'a tenure-holder aggrieved by such order' embrace even those tenure-holders who have not been served with a notice under Section 10(2) and their scope is no manner curtailed by the word passed in hs absence and on sufficient cause bering shown for his absence'. A tenure-holder who has not been served with a notice and has also not been made a party would be treated as having been absent and the fact that he was not a party would itself sufficiently account for his absence. Section 11(2) should not, to my mind, be interpreted as withholding its benefits from a person who has committed no default at all while extending it to a person who has committed a default but furnishes. Sufficient case for it."

It is thus evident that Section 11(2) permits tenure-holders to file objections. Such tenure-holder may be those who have been served with a notice and the statement under Section 10(2). It also includes tenure holders who have not been given or served with any such notice or statement. The construction put by the Full Bench on Section 11(2) embraces persons who claim to be tenure-holders and who having come

to know of the declaration of their land as surplus land of some other persons, whish to challenge that declaration or notification thereof in the gazette under Sec. 14. They are all entitled to file an objection under Section 11(2) and get an adjudication thereon as required by Section 12.

Section 9 to 13 are in their operation and effect independent of Section 14(3) to (7). Even though sub-sections (3) to (7) of Section 14 were on the statute book, yet the Full Bench took the view that a tenure-holder would be entitled to file an objection under Section 11(2) even though he had not been given any notice. The legislature would be presumed to have this decision in its mind when it repealed sub-sections (3) to (7) Section 14 but did not touch the provisions of Section 9 to 13, by excluding from their purview, persons who claimed to be tenure holders, but who had not been served with a notice or statement under Section 10(2). In substance the repeal of Section 14(3) to (7) takes away the rights of a lessee from a tenure-holder, to be heard."

Writ petition is allowed. The matter is sent back to the Prescribed Authority for deciding afresh in the light of the observation made above as well as in the light of the judgment of ***Upper Ganges Sugar Mills Ltd. V. Civil Judge, Bijnor 1969 R.D. 202.***

No order as to costs.

(Rajesh Tandon, J.)

26.04.2006
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